

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF  
MASSACHUSETTS,

Plaintiff,

v.

KANE SCRAP IRON & METAL, INC.,

Defendant.

Case No.

**COMPLAINT**

**INTRODUCTION**

1. Kane Scrap Iron & Metal, Inc. (“Kane”) discharges industrial stormwater contaminated with lead and other pollutants from its scrap metal facility at 184 East Meadow Street, Chicopee, Massachusetts (the “Facility”) into the City of Chicopee’s municipal storm drain system, where it flows untreated to the Chicopee River. Kane’s stormwater contains excessive amounts of lead, zinc, aluminum, iron, copper, chemical oxygen demand (“COD”), and total suspended solids (“TSS”). Kane has not properly monitored its stormwater discharges because it has failed to sample from at least two discharge locations or “outfalls.” But, even its own incomplete sampling results show concentrations of contaminants many times higher than benchmark standards established by the United States Environmental Protection Agency (“EPA”). For example, as recently as the second quarter of 2019 (April -June), Kane’s stormwater discharges from its outfall #1 exceeded the benchmarks for lead by 609% (more than seven times the limit), aluminum by 241% (more than three times the limit), COD by 369% (almost five times

the limit), iron by 386% (almost five times the limit), and zinc by 1020% (more than eleven times the limit).

2. Kane's failure to take adequate corrective action to eliminate these excessive pollutant discharges and to otherwise properly control and monitor the quality of its stormwater discharges violate the federal Clean Water Act. 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act" or "the Act") and the terms of a stormwater permit issued to Kane by the United States Environmental Protection Agency ("EPA").

3. Kane stores and processes scrap materials outdoors at its Facility. The Facility spans approximately 4-5 acres. Kane moves raw material, final processed material, and waste material ("Industrial Materials") around and off the Facility with heavy equipment and vehicles. Kane and persons that visit the Kane Facility in the ordinary course of business scatter these Industrial Materials around the Facility, including on its ground surface. As illustrated in the photograph below, much of the surface of the Facility is strewn with Industrial Materials. There are large uncovered piles of Industrial Materials throughout the Facility. See also Exhibit A (photos of the Facility).



4. Rain and snow melt (jointly “stormwater”) land on Industrial Material piles, equipment, the ground surface, and Industrial Materials that are present throughout the Facility. Stormwater on the Facility picks up pollutants, including heavy metals, and then flows untreated to the Chicopee River via at least four municipal catch basins on East Meadow Street.

5. Excessive heavy metals in runoff pose a long-term threat to aquatic ecosystems, the food chain, and human health. Once introduced into the aquatic environment, lead and other heavy metals such as zinc, aluminum, iron, and copper will mix in the water column, settle into sediments, or be consumed by biota. Heavy metals are readily dissolved in water, making them easily absorbed by aquatic organisms such as fish and invertebrates. Lead is particularly toxic to organisms even at very low concentrations. Excessive levels of heavy metals in the aquatic environment can disturb organisms’ growth, metabolism, and reproduction. The presence of heavy metals in bottom-sediment is a long-term source of aquatic contamination because the metals will be slowly released into the environment over time and will become re-mobilized in times of

flooding or other disruptive events. Heavy metals tend to bioaccumulate, posing a threat to species higher up on the food chain, such as humans.

6. The Facility's stormwater is discharged untreated via the municipal storm drain system to the Chicopee River within an area designated "Core Habitat" for state-listed endangered species. The confluence of the Chicopee and Connecticut Rivers, downstream from the Facility, has been designated as estimated and priority habitat for several state-listed endangered species. Endangered species in the area include the Shortnose Sturgeon, the Bald Eagle, the Riverine Clubtail (dragonfly), the Yellow Lampmussel (mussel), and the Arrow Clubtail (dragonfly). These species' habitats may be impacted by Kane's unlawful stormwater discharges.

7. The Commonwealth of Massachusetts (the "Commonwealth") brings this civil suit to enforce the requirements of the Act. The Commonwealth seeks injunctive relief, civil penalties, and other relief the Court deems appropriate to redress Kane's illegal discharges of pollution.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

9. On \_\_\_\_\_, the Commonwealth provided notice of Kane's violations of the Clean Water Act, and of its intention to file suit against Kane (the "Notice Letter"), to the Administrator of EPA; the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("MassDEP"); and to Kane, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

10. More than sixty days have passed since notice was served.

11. This action is not barred by any prior state or federal enforcement action addressing the violations alleged in this Complaint.

12. The Commonwealth has an interest in protecting for its residents the integrity of Massachusetts waters, and the related health, safety, economic, recreational, aesthetic, and environmental benefits those waters provide. The interests of the Commonwealth have been, are being, and will continue to be adversely affected by Kane's failure to comply with the Clean Water Act, as alleged in this Complaint. The requested relief will redress the harms to the Commonwealth caused by Kane's activities. Kane's continuing acts and omissions, as alleged in this Complaint, will irreparably harm the Commonwealth, for which harm it has no plain, speedy, or adequate remedy at law.

13. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

### **PARTIES**

14. Plaintiff is the Commonwealth, appearing by and through the Attorney General.

15. The Attorney General is the chief law officer of the Commonwealth, with offices at One Ashburton Place, Boston, Massachusetts. She is authorized to bring this action and to seek the requested relief under G.L. c. 12, §§ 3 and 11D.

16. Defendant Kane, Inc. is a domestic corporation with its principle address listed as 148 Croyden Terrace, Springfield, Massachusetts.

## STATUTORY BACKGROUND

### Federal Clean Water Act Requirements

17. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by EPA under the National Pollutant Discharge Elimination System (“NPDES”). *See* Sections 301(a), 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

18. Stormwater is the leading cause of water quality impairment in Massachusetts. During every rain or snowmelt event, runoff flows over the land surface, picking up potential pollutants such as sediment, organic matter, nutrients, metals and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people.

19. To minimize polluted stormwater discharges from industrial facilities, EPA has issued a general industrial stormwater permit (“Stormwater Permit”) under the NPDES program. *See* 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015).

20. Companies that acquire, stockpile, and process scrap metals and that discharge industrial stormwater to waters of the United States directly or through separate storm sewer systems are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D-4 (Sector N).

21. The Stormwater Permit requires these facilities to, among other things:

- a. prepare a stormwater pollution prevention plan (“SWPPP”) that, among other things, describes the facility and identifies all stormwater outfalls, Stormwater Permit, Section 5.2.2 (pg. 31);

- b. submit to EPA a Notice of Intent (“NOI”) to be covered by the Stormwater Permit that lists all stormwater outfalls by a unique 3-digit code and corresponding latitude and longitude coordinates, Stormwater Permit, Section 1.2 (pg. 9), and Appendix G;
- c. select, design, install, and implement pollutant control measures that minimize pollutants in stormwater discharges, Stormwater Permit, Section 2.1 (pg. 14);
- d. locate materials, equipment, and activities to contain potential spills, Stormwater Permit, Section 2.1.2.4 (pg. 15);
- e. minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas, Stormwater Permit, Section 8.N.3.1.2 (pgs. 125-126);
- f. keep clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage and floatable debris, Stormwater Permit, Section 2.1.2.2 (pgs. 15-16);
- g. minimize generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges, Stormwater Permit, Section 2.1.2.10 (pg. 19);
- h. collect and analyze stormwater samples for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron, copper, chemical oxygen demand (“COD”), and total

suspended solids (“TSS”), Stormwater Permit, Sections 6 and 8.N.6 (pgs. 30-44, 129-130);

- i. report all benchmark monitoring data to EPA within mandatory deadlines, Stormwater Permit, Section 7.4 (pgs. 48-49);
- j. conduct and document corrective action within mandatory timelines to expeditiously eliminate excessive stormwater pollution whenever the average of four quarterly sampling results exceeds an applicable benchmark, Stormwater Permit, Sections 2.1 and 4.2 (pgs. 14, 27-29); and
- k. conduct routine facility inspections at least quarterly and quarterly visual assessments to, among other things, sample and assess the quality of the facility’s stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to minimize pollutant discharge, and to ensure timely corrective actions are taken when they are not, Stormwater Permit, Sections 3.1. and 3.2 (pgs. 22-26).

*Citizen Suit Provision of the Federal Clean Water Act*

22. Section 505(a)(1) of the Act authorizes citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 1362(5).

23. The Commonwealth is a “citizen” within the meaning of Section 505(g) of the Act, because it is a “person” having an interest which is or may be adversely affected. *See* 33 U.S.C. § 1365(g).



24. Under Section 505 of the Act, this Court has authority to enjoin Kane's violations of the Act's prohibition on unauthorized discharges of pollutants and to require the company to comply with its Stormwater Permit. The Court also has authority to impose penalties of up to \$53,484 per day for each of the company's prior violations. *See* 33 U.S.C. §§ 1365(a); 1319(d); 40 C.F.R. § 19.4; 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018).<sup>1</sup>

## **STATEMENT OF FACTS**

### **Description of the Kane Facility & Activities**

25. Kane operates a scrap iron and metal recycling facility on about five acres of impervious surface in the Ferry Lane area of Chicopee, near the junction of Routes 391 and 90. The company receives, stores, and processes scrap metal materials on several acres of impervious surface in Chicopee, adjacent to municipal catch basins that drain into the Chicopee municipal storm drain system. The Chicopee municipal storm drain system empties into the Chicopee River, downstream of the Facility.

26. Kane acquires materials composed of ferrous and non-ferrous scrap metal, including appliances, and then processes the materials into saleable product. Kane stockpiles Industrial Materials at the Facility and moves them around the Facility with vehicles and heavy equipment.

27. Kane's stores its Industrial Materials uncovered outside. Kane moves Industrial Material around the Facility, placing it in large piles and in uncovered containers, and dropping it onto the ground surface. Industrial Material that Kane places or drops on the ground mixes with other sediments on the ground.

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<sup>1</sup> The statutory maximum civil penalty for violations that occurred on or before November 2, 2015 is \$37,500 per day, per violation. 40 CFR § 19.4, Table 1.

28. Precipitation comes into contact with Kane's Industrial Material and with the sediment on the ground surface of the Facility. Precipitation that lands on the Facility picks up pollutants including heavy metals and runs off the Facility into the nearby municipal catch basins.

29. Pollutants at the Facility become mobilized by wind, equipment, and vehicles at the Facility and are tracked around and off the Facility by vehicles.

30. Pollutants from the Facility that are tracked onto East Meadow Street by equipment and vehicles are picked up in stormwater and discharged into the catch basins on East Meadow Street and then to the Chicopee River.

### **Potential Water Quality Impacts from Pollutants in Kane's Stormwater Discharges**

31. Kane's stormwater discharges contain a myriad of pollutants, some of which it is required to monitor pursuant to the Stormwater Permit. Among the pollutants present in excessive amounts in Kane's stormwater discharges are lead, zinc, aluminum, iron, copper, COD, and TSS.

32. Lead is commonly used as an additive in the steel making process to improve the machinability of the steel. It may be present in the coatings on scrap metal (paints, hot dips, etc.), or it may be present as pure metal, an alloy, or its oxides. The use of heat in the processing of steel scrap can release substantial amount of lead fume, resulting in the settling of lead dust. Abrasive removal of surface coatings also creates lead dust. Lead on the surfaces of scrap metal and lead dust from the processing of scrap is picked up in stormwater and can adversely impact water quality.<sup>2</sup> Adverse effects of lead in water on aquatic species occur at very low concentrations, and include reduced survival, impaired reproduction, and reduced growth. Even at low levels, lead may

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<sup>2</sup> The presence of dust in the air and on the surfaces of scrap metal facilities may also pose a significant risk to worker health and safety. Occupational Safety and Health Administration, Guidance for the Identification and Control of Safety and Health Hazards in Metal Scrap Recycling (2008), pgs. 21-22.

cause a range of human health effects, including learning disabilities, kidney problems, and high blood pressure. Children are particularly vulnerable to impacts from lead contamination.

33. Zinc is used in metal alloys such as brass, nickel silver, and aluminum solder, and is used in metal galvanizing, a process of applying a coating to steel or iron to slow the rate of corrosion. Adverse effects of excessive dissolved zinc among aquatic species include altered behavior, blood and serum chemistry, impaired reproduction, and reduced growth.

34. Aluminum is the most widely-recycled nonferrous metal. Sources of aluminum in a metal scrap yard may include left-over material from industrial processes (e.g., aluminum left over when can lids are punched out of sheets), or aluminum from building siding or fixtures. Elevated levels of aluminum can affect some species' ability to regulate ions, like salts, and inhibit respiratory functions, like breathing. Aluminum can accumulate on the surface of a fish's gill, leading to respiratory dysfunction, and possibly death.

35. Ferrous scrap is metal that contains iron. Iron and steel (which contains iron) can be processed and re-melted repeatedly to form new objects. Ferrous scrap comes from sources such as mill scrap (from primary processing), used construction beams, plates, pipes, tubes, wiring, and shot, automotive scraps, railroad scrap and railcar scrap, and other miscellaneous scrap metal. Ferrous metals are magnetic and are often collected in scrap yards by a large electromagnet attached to a crane, sweeping across piles of scrap to grab magnetic objects. Excessive concentrations of iron in the aquatic environment can cause oxidation of gill tissue, gill damage, anemia, and secondary bacterial and fungal infections in fish. Iron in the form of solid particulate can settle on the bottom of water bodies and destroy bottom-dwelling invertebrates, plants, or incubating fish eggs. Iron can also cause aesthetically objectionable conditions in water bodies by making the water appear rust colored.

36. Copper is used in a variety of applications such as pipes, electrical components, and electric wires. The storage and processing of these components can lead to contamination of stormwater runoff at scrap yard facilities. The melding or grinding of copper metal may increase the presence of copper dust. Copper in at high concentrations has a negative impact on fish and wildlife and may impact predator avoidance behaviors, growth and migration.

37. COD is a measurement of organic matter in water. Excessive discharges of organic matter pose a risk of harm to water quality and aquatic life. When high levels of organic matter are discharged to a waterbody, the presence of bacteria, fungi, and other decomposer organisms increases. The presence of decomposer organisms and the decomposition process lowers the available oxygen in the water, impairing other aquatic organisms or, in severe cases, asphyxiating them.

38. TSS is an indicator parameter that measures the presence of solids, or sediment, suspended in a water sample. Solids in scrap yard stormwater discharges are likely to include non-dissolved metal particles and contaminated soil. Even uncontaminated sediment destroys habitat, harms aquatic organisms, and can contribute to flooding. Sediment settles to the bottom of a river where it disrupts and smothers bottom feeding organisms. Sediment becomes suspended in water, where it harms and kills fish by clogging their gills, making it harder for them to breathe. Excessive sedimentation harms the entire food chain by destroying habitat and killing the smaller organisms on which larger ones depend. For example, sediment in the water column increases turbidity, reducing light penetration, decreasing the ability of plant communities to photosynthesize, preventing animals from seeing food, and reducing fish populations. In addition, other pollutants, including toxic pollutants such as heavy metals, pesticides, and petroleum by-

products, bind to sediment and can significantly impact water quality when carried by stormwater to rivers and other waterbodies.

### **The Chicopee River**

39. The Chicopee River, a major tributary of the Connecticut River, originates in Palmer, Massachusetts and joins the Connecticut River in downtown Chicopee. The Connecticut and Chicopee Rivers provide the City of Chicopee with 19 miles of riverfront land. Both rivers offer views, habitat, power generation, and recreational opportunities such as boating, fishing, and informal trails along dikes and natural banks.

40. The confluence of the Chicopee and Connecticut Rivers downstream of the Facility has been designated by the Commonwealth as “Estimated Habitat of Rare Wildlife” and “Priority Habitat of Rare Species.” This habitat is home to three state listed endangered species: a dragonfly known as the Riverine Clubtail (*Stylurus amnicola*), a freshwater mussel known as the Yellow Lampmussel (*Lampsilis cariosa*), and a fish known as the Shortnose Sturgeon (*Acipenser brevirostrum*). The latter species has also been federally-listed as endangered.

41. The area of the Chicopee River into which the facility’s stormwater is discharged via the municipal system is in an area designated by the Commonwealth as “Core Habitat,” critical for the long-term persistence of rare species and other species of conservation concern. According to the Massachusetts Department of Fisheries & Wildlife, protection of Core Habitat “is essential to safeguard the diversity of species and their habitats, intact ecosystems, and resilient natural landscapes across Massachusetts.” This designation of Core Habitat is associated with habitat for four anadromous fish species, including the endangered Shortnose Sturgeon. It is also associated with species of conservation concern, including the following state-listed endangered species: the

Bald Eagle (*Haliaeetus leucocephalus*), a dragonfly known as the Arrow Clubtail (*Stylurus spiniceps*); and the previously mentioned dragonfly Riverine Clubtail (*Stylurus Amnicola*).

42. The habitat for these endangered species may be impacted by Kane's stormwater discharges to the Chicopee River via the Chicopee municipal storm drain system.

**Kane's Discharge of Pollutants from the Facility**

*Polluted Stormwater Discharges to the Chicopee River  
via Chicopee's Municipal Stormwater System*

43. Industrial Materials, vehicles, and heavy machinery at the Facility are exposed to precipitation.

44. Stormwater that comes into contact with Industrial Materials, vehicles, and heavy machinery at the Facility picks up pollutants from the Facility.

45. Since at least September 1, 2014, Kane has discharged polluted stormwater during rain events into Chicopee's municipal stormwater system via at least four catch basins on East Meadow Street.

46. Pollutants at the Facility adhere to and are tracked off the Facility and on to East Meadow Street by equipment and vehicles (for example, tires and treads). Pollutants from the Facility that are tracked onto East Meadow Street by equipment and vehicles are picked up in stormwater and discharged into municipal catch basins on East Meadow Street, from which they flow untreated to the Chicopee River.

*Kane's Failure to Comply  
With the Requirements of the Stormwater Permit*

47. On or around September 13, 2011 Kane submitted a Notice of Intent to be covered by the Stormwater Permit. On September 24, 2015, Kane submitted a Notice of Intent to be covered by the reissued Stormwater Permit.

48. For at least the last five years, Kane has been violating the terms of the Stormwater Permit.

49. Kane has failed to prepare a SWPPP that, among other things, identifies the location of all stormwater outfalls. Kane has identified only two outfalls at the Facility, “Outfall 001,” located at GPS coordinates +42.160296; -72.612195, and “Outfall 002,” located at GPS coordinates +42.161242, -72.612182. In addition to Outfalls 1 and 2, there are other locations on East Meadow Road where Kane discharges stormwater. These locations include, but may not be limited to, two catch basins whose locations are depicted on an aerial photograph taken from Google Maps and annotated by the Attorney General’s Office that is attached hereto as Exhibit B.

50. Kane has not submitted to EPA a complete and accurate NOI because it has not listed the location of all its outfalls.

51. Kane has failed to select, design, install, and implement control measures that minimize pollutants in its stormwater. Industrial Material and heavy equipment are uncovered and exposed to precipitation. Industrial Materials are strewn throughout the Facility in locations where pollutants may be readily picked up by runoff. Polluted runoff from the Facility flows untreated into catch basins on East Meadow Road. Kane routinely exceeds, often by orders of magnitude, EPA benchmark limits for lead, zinc, aluminum, iron, copper, COD, and TSS at both of its identified outfalls (*see* Exhibit C – Table of Benchmark Exceedances).

52. Kane has failed to locate materials, equipment, and activities to contain potential spills.

53. Kane has failed to minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas.

54. Kane has not kept clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage, and floatable debris.

55. Kane has not minimized generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges.

56. Kane has failed to collect and analyze stormwater samples for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron, copper, COD, and TSS because it has failed to sample from all its stormwater outfalls.

57. Kane has failed to report sampling results from identified outfalls to EPA within established deadlines. Kane has also failed to report any sampling results from the unidentified outfalls.

58. Kane failed to modify its control measures per the corrective action requirements of the Stormwater Permit after it became clear that its control measures were not achieving their intended effect of minimizing pollutant discharges. Kane has been discharging stormwater that exceeds by significant amounts EPA's benchmark values for lead, zinc, aluminum, iron, copper, COD, and TSS for at least five years. Exhibit C, which is based on Kane's discharge monitoring reports, itemizes benchmark exceedances occurring during the last three and a half years.

59. Since before the third quarter of 2014 (July-September 2014), Kane has been repeatedly exceeding all the EPA benchmark values by significant amounts. Accordingly, corrective action was required by, at the latest, October 1, 2014. In any event, corrective action was required by, at the latest, March 31, 2016.

60. Kane has failed to appropriately conduct routine and quarterly facility inspections to ensure, among other things, that control measures are functioning correctly and are adequate to



minimize pollutant discharges and to ensure that corrective actions are timely performed when necessary.

**FIRST CAUSE OF ACTION**  
**Noncompliance with the Federal Stormwater Permit:**  
**Violations of Section 301(a) of the Federal Clean Water Act, 33 U.S.C. § 1311(a)**

61. The Commonwealth realleges and incorporates by reference the allegations contained in the above paragraphs.

62. Kane is a “person” within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

63. The Chicopee River is a “navigable water” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

64. Since at the latest, October 1, 2014, Kane has violated the Stormwater Permit by failing to:

- a. prepare a SWPPP for the Facility that, among other things, includes the location of all stormwater outfalls in the SWPPP (violations of section 5.2.2);
- b. submit a “complete and accurate NOI” for the Facility that lists all stormwater outfalls by a unique 3-digit code and corresponding latitude and longitude coordinates (violations of section 1.2.1 and Appendix G);
- c. select, design, install, and implement pollutant control measures that minimize pollutants in stormwater discharges (violations of section 2.1);
- d. locate materials, equipment, and activities to contain potential spills (violations of section 2.1.2.1);
- e. minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas (violations of section 8.N.3.1.2);

- f. keep clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage and floatable debris, Stormwater Permit (violations of section 2.1.2.2);
- g. minimize generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges, Stormwater Permit (violations of section 2.1.2.10);
- h. collect and analyze stormwater samples for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron, copper, chemical oxygen demand (“COD”), and total suspended solids (“TSS”) (violations of sections 6 and 8.N.6);
- i. report all benchmark monitoring data to EPA within mandatory deadlines (violations of section 7.4);
- j. conduct and document corrective action within mandatory timelines to expeditiously eliminate excessive stormwater pollution whenever the average of four quarterly sampling results exceeds an applicable benchmark (violations of sections 2.1 and 4.2); and
- k. conduct routine facility inspections at least quarterly and quarterly visual assessments to, among other things, sample and assess the quality of the facility’s stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not (violations of sections 3.1. and 3.2.

65. Each of Kane's violations of each of the requirement of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the violation occurred and/or continued. *See also* Section 505(a)(1) and (f), 33 U.S.C. §§ 1365(a)(1) and (f).

66. These violations establish an ongoing pattern of failure to comply with the Stormwater Permit's requirements.

### **RELIEF REQUESTED**

WHEREFORE, the Commonwealth respectfully requests that this Court grant the following relief:

1. Require Kane to comply with EPA's federal Stormwater Permit;
2. Order Kane to pay civil penalties of up to \$37,500 per day for each violation of the Federal Clean Water Act that occurred on or before November 2, 2015, and civil penalties of up to \$53,484 per day for each violation of the Federal Clean Water Act that occurred after November 2, 2015, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a), 40 CFR § 19.4, and 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018);
3. Order Kane to take appropriate actions to restore the quality of protected areas impaired by its activities;
4. Award the Commonwealth's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and
5. Award any such other and further relief as this Court may deem appropriate.

Dated: November 18, 2020

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

MAURA HEALEY  
ATTORNEY GENERAL



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EXHIBIT A

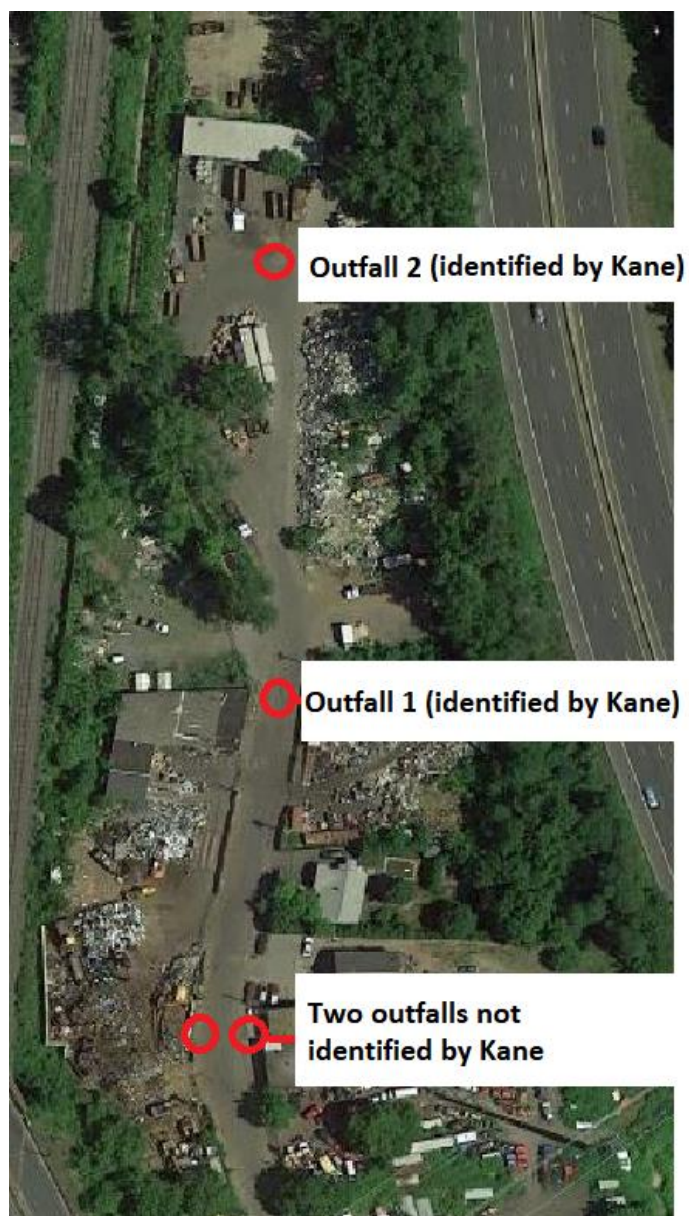
Annotated Photos of Facility Taken by  
Attorney General's Office on June 13, 2019

Red arrow added by Attorney General's Office shows direction of stormwater flow





**EXHIBIT B**  
Aerial of Facility taken from Google Earth and  
Annotated by Attorney General's Office  
Showing Location of Facility Outfalls



**EXHIBIT B**  
**Table of Benchmark Exceedances**

**Outfall #1**

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above benchmark
3/31/2016	Lead	0.023 mg/l	0.138 mg/l	500%
	Aluminum	0.75 mg/l	0.778 mg/l	3.73333%
	Iron	1 mg/l	1.79 mg/l	79%
	Copper	0.0056 µg/l	0.66400003 µg/l	11757.1%
	Zinc	0.05 mg/l	0.829 mg/l	1558%
6/30/2016	Lead	0.023 mg/l	0.145 mg/l	530.435%
	Aluminum	0.75 mg/l	0.829 mg/l	10.5333%
	COD	120 mg/l	584 mg/l	386.667%
	Iron	1 mg/l	1.65 mg/l	65%
	Copper	0.0056 µg/l	1.05000005 µg/l	18650%
	Zinc	0.05 mg/l	0.691 mg/l	1282%
9/30/2016	Lead	0.023 mg/l	0.329 mg/l	1330.43%
	Aluminum	0.75 mg/l	5.52 mg/l	636%
	COD	120 mg/l	361 mg/l	200.833%
	Iron	1 mg/l	12.5 mg/l	1150%
	TSS	100 mg/l	172 mg/l	72%
	Copper	0.0056 µg/l	0.59500003 µg/l	10525%
	Zinc	0.05 mg/l	0.721 mg/l	1342%
12/31/2016	Lead	0.023 mg/l	0.105 mg/l	356.522%
	Aluminum	0.75 mg/l	1.58 mg/l	110.667%
	COD	120 mg/l	417 mg/l	247.5%
	Iron	1 mg/l	2.87 mg/l	187%
	Zinc	0.05 mg/l	0.392 mg/l	684%
3/31/2017	Lead	0.023 mg/l	0.0341 mg/l	48.2609%
	Iron	1 mg/l	1.63 mg/l	63%
	Zinc	0.05 mg/l	0.215 mg/l	330%

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above benchmark
6/30/2017	Lead	0.023 mg/l	0.083 mg/l	260.87%
	Aluminum	0.75 mg/l	0.999 mg/l	33.2%
	COD	120 mg/l	245 mg/l	104.167%
	Iron	1 mg/l	2.57 mg/l	157%
	Zinc	0.05 mg/l	0.361 mg/l	622%
9/30/2017	Lead	0.023 mg/l	0.257 mg/l	1017.39%
	Aluminum	0.75 mg/l	2.26 mg/l	201.333%
	Iron	1 mg/l	4.93 mg/l	393%
	Zinc	0.05 mg/l	0.39 mg/l	680%
12/31/2017	Lead	0.023 mg/l	0.026 mg/l	13.0435%
	Zinc	0.05 mg/l	0.3 mg/l	500%
3/31/2018	Lead	0.023 mg/l	0.0916 mg/l	298.261%
	Iron	1 mg/l	1.63 mg/l	63%
	Zinc	0.05 mg/l	0.79 mg/l	1480%
6/30/2018	Zinc	0.05 mg/l	0.103 mg/l	106%
9/30/2018	Lead	0.023 mg/l	0.0526 mg/l	128.696%
	Aluminum	0.75 mg/l	0.774 mg/l	3.2%
	Iron	1 mg/l	1.24 mg/l	24%
	Zinc	0.05 mg/l	0.168 mg/l	236%
12/31/2018	Lead	0.023 mg/l	0.118 mg/l	413.043%
	Aluminum	0.75 mg/l	5.7 mg/l	660%
	Iron	1 mg/l	10.1 mg/l	910%
	Zinc	0.05 mg/l	0.411 mg/l	722%
3/31/2019	Lead	.023 mg/l	0.0621 mg/l	170%
	Aluminum	.75 mg/l	0.9525 mg/l	27%
	COD	120 mg/l	1070.4 mg/l	792%
	Iron	1.0 mg/l	1.2 mg/l	20%
	Zinc	.05 mg/l	0.967 mg/l	1834%
6/3/2019	Lead	.023 mg/l	0.16307 mg/l	609%



Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above benchmark
	Aluminum	.75 mg/l	2.5575 mg/l	241%
	COD	120 mg/l	562.8 mg/l	369%
	Iron	1.0 mg/l	4.86 mg/l	386%
	Zinc	.05 mg/l	0.56 mg/l	1020%

## Outfall #2

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above
3/31/2016	Lead	0.023 mg/l	0.109 mg/l	373.913%
	Aluminum	0.75 mg/l	1.74 mg/l	132%
	Iron	1 mg/l	2.74 mg/l	174%
	Copper	0.0056 µg/l	0.49800002 µg/l	8792.86%
	Zinc	0.05 mg/l	0.392 mg/l	684%
6/30/2016	Lead	0.023 mg/l	0.0521 mg/l	126.522%
	COD	120 mg/l	172 mg/l	43.3333%
	Iron	1 mg/l	1.22 mg/l	22%
	Copper	0.0056 µg/l	0.21500001 µg/l	3739.29%
	Zinc	0.05 mg/l	0.202 mg/l	304%
9/30/2016	Lead	0.023 mg/l	0.148 mg/l	543.478%
	Aluminum	0.75 mg/l	2.63 mg/l	250.667%
	COD	120 mg/l	121 mg/l	0.83333%
	Iron	1 mg/l	5.7 mg/l	470%
	Copper	0.0056 µg/l	0.16600001 µg/l	2864.29%
	Zinc	0.05 mg/l	0.273 mg/l	446%
12/31/2016	Lead	0.023 mg/l	0.0561 mg/l	143.913%
	COD	120 mg/l	286 mg/l	138.333%
	Iron	1 mg/l	1.3 mg/l	30%
	Zinc	0.05 mg/l	0.21 mg/l	320%

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above
3/31/2017	Lead	0.023 mg/l	0.0636 mg/l	176.522%
	Aluminum	0.75 mg/l	1.4 mg/l	86.6667%
	Iron	1 mg/l	3.15 mg/l	215%
	Zinc	0.05 mg/l	0.218 mg/l	336%
6/30/2017	Lead	0.023 mg/l	0.084 mg/l	265.217%
	Aluminum	0.75 mg/l	1.36 mg/l	81.3333%
	COD	120 mg/l	301 mg/l	150.833%
	Iron	1 mg/l	2.92 mg/l	192%
	Zinc	0.05 mg/l	0.327 mg/l	554%
9/30/2017	Lead	0.023 mg/l	0.191 mg/l	730.435%
	Aluminum	0.75 mg/l	1.95 mg/l	160%
	COD	120 mg/l	194 mg/l	61.6667%
	Iron	1 mg/l	4.63 mg/l	363%
	Zinc	0.05 mg/l	0.684 mg/l	1268%
12/31/2017	Lead	0.023 mg/l	0.026 mg/l	13.0435%
	Zinc	0.05 mg/l	0.29 mg/l	480%
3/31/2018	Aluminum	0.75 mg/l	0.922 mg/l	22.9333%
	COD	120 mg/l	442 mg/l	268.333%
	Zinc	0.05 mg/l	0.202 mg/l	304%
6/30/2018	Lead	0.023 mg/l	0.0649 mg/l	182.174%
	COD	120 mg/l	148 mg/l	23.3333%
	Zinc	0.05 mg/l	0.303 mg/l	506%
9/30/2018	Lead	0.023 mg/l	0.0322 mg/l	40%
	Aluminum	0.75 mg/l	0.914 mg/l	21.8667%
	Iron	1 mg/l	1.43 mg/l	43%
	Zinc	0.05 mg/l	0.171 mg/l	242%
12/31/2018	Lead	0.023 mg/l	0.114 mg/l	395.652%
	Aluminum	0.75 mg/l	10.7 mg/l	1326.67%
	Iron	1 mg/l	15.7 mg/l	1470%

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage above
	TSS	100 mg/l	140 mg/l	40%
	Zinc	0.05 mg/l	0.381 mg/l	662%
3/31/2019	Lead	.023 mg/l	0.02507 mg/l	9%
	Aluminum	.75 mg/l	1.2225 mg/l	63%
	COD	120 mg/l	147.6 mg/l	23%
	Iron	1.0 mg/l	1.81 mg/l	81%
	Zinc	.05 mg/l	0.15 mg/l	200%
6/3/2019	Lead	.023 mg/l	0.02714 mg/l	18%
	Aluminum	.75 mg/l	1.4175 mg/l	89%
	Iron	1.0 mg/l	2.01 mg/l	101%
	Zinc	.05 mg/l	0.146 mg/l	192%